

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
May 3, 2010**

APPROVED 6/7/10

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: Eric Oakes
Michael Bieri
Raymond Arroyo, Vice-Chairman
William Martin, Chairman
Robert Bicocchi
Christopher Owens
Guy Hartman
Vernon McKoy (Alt #1)
Matthew Ceplo (Alt. #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Brooker Engineering,
Board Engineer
Steve Lydon, Burgis Associates,
Board Planner

ABSENT: None

4. MINUTES - The Minutes of 3/22/10, 4/5/10 and 4/12/10 were tabled to the next meeting on motion made, seconded and carried on roll call vote.

5. CORRESPONDENCE:

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1. Letter dated 4/28/10 from Burgis Associates RE: Retro Fitness, 25 Sullivan Street;

2. Letter dated 4/26/20 from Brooker Engineering RE: Retro Fitness, 25 Sullivan Street;

6. **VOUCHERS:** A motion to approve Vouchers totaling \$3,312.50 was made by Mr. Arroyo, seconded by Mr. Bicocchi, and carried unanimously on roll call vote.

7. **RESOLUTIONS:**

1. **Comer, 401 Fourth Avenue - Variance -** Board Attorney Rutherford read the Resolution of Approval into the record. A motion for approval was made by Mr. Arroyo and seconded by Mr. Bierl. On roll call vote, Mr. Bierl, Mr. Arroyo, Mr. Oakes, Mr. Ceplo, and Mr. Martin voted yes.

8. **PENDING NEW BUSINESS:**

9. **VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS
The Board Professionals were sworn in.

1. **Pompilio's Pizza, Inc., 221-223 Westwood Ave. - Variance for Expansion -** (Steve Lydon recused; David Spatz appeared as Substitute Planner) - Mr. Nemcik represented the applicant and noted the revised plans were sent per the last meeting. He gave an overview of the changes. Chairman Martin commented Mr. Benanti's revised plan was accepted and the record updated. The three items were taken care of. A brief summary was given by Mr. Nemcik. This is an added detail component of the pastry shop, a pre-existing, non-conforming use, which continues as an Italian restaurant in that area for many years, to be used for the restaurant and special orders. The Planner found there is sufficient parking in the down town area. Mr. Nemcik asked the Board to give consideration by way of the variance requested and a favorable vote.

Chairman Martin called for discussion by Board Members. Mr. Oakes asked if they found out about the easement. Mr. Martin stated the easement extends to Fairview Avenue, but not

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to Kinderkamack. Chairman Martin asked if anyone was concerned about parking on Westwood Avenue or an increase in the intensity because of additional seating. Board comments followed.

Mr. Bieri commented it may be more intense, but it does not bother him because of the timing.

Mr. Hartman asked about seating. Mr. Martin asked if the Board wanted to approve the total of 45 seats rather than the timed seating, as it would be impossible for Board to police and enforce.

Chairman Martin was concerned about parking and stated this restaurant exists there now with 26 seats, and because of that they can be more familiar with the operations and intensity, it is not like a new restaurant coming in. It is clearly a pre-existing, 26 seat Italian Pizzeria restaurant that wants to expand into the next door space, which could always open with a specialty food business, and you could actually wind up with more intensity of parking in a stand-alone use. Mr. Arroyo commented the people ordering the dessert are already there, which will be less than people going to a separate use. Chairman Martin noted it is legally here as a non-conforming use and is expanding into the next space. There were no further questions, comments or discussions.

A motion for approval was made by Mr. Arroyo and seconded by Mr. Oakes, granting a valid non-conforming use - a D2 variance; variance from the parking requirements of the Borough; Site Plan approval as shown on the latest plan of 4/19/10, with the following conditions: 45 seats granted at all times; no limitation as to the days or hours for seating. There are 26 existing seats, and the Board is granting an additional 19. The 45 seats do not include any outdoor seating. Any Outdoor seating is subject to the Outdoor Dining Ordinance. The gourmet component will be part of the plan and application, per testimony at the last meeting. Upgrades to interior and exterior of building are to be made per the plans. Compliance with Historic Preservation Commission, and dumpster location required.

There were no further questions, comments or discussions. On roll call vote, Mr. Bicocchi voted yes, commenting he voiced his concern, but with consideration voted yes; Mr. Bieri, Mr.

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Arroyo, Mr. Hartman, Mr. Oakes, Mr. Owens, and Mr. Martin all voted yes. Mr. Martin commented they were very concerned about parking and keeping a good balance. Applicant has established the burden of proof. Mr. Nemcik stated he greatly respected the decision.

A motion for approval was made by Mr. Arroyo and seconded by Mr. Oakes. On roll call vote, Mr. Bicocchi, Mr. Bieri, Mr. Arroyo, Mr. Hartman, Mr. Oakes, Mr. Owens, and Mr. Martin voted yes.

2. New St. Mark AME Zion Church, 100 Palisade Avenue - Minor site Plan application - Carried to 6/7/10 at the request of the applicant.

3. Keynton, 27 Hillside Avenue - Variance application - Carried to 6/7/10 at the request of the applicant;

4. Fahie, 60 Westwood Boulevard - Application for Certificate of Non-conforming Use - L. Scott Berkoben, Esq. represented the applicant in a Section 68 application. Mr. Brown was sworn in and stated he was awaiting a response from the Borough regarding the driveway being on the other lot. Mr. Brown introduced photos taken by him of the property, which he described in detail. Mr. Rutherford marked them into evidence. Mr. Martin stated the Board needed more proofs and documentation. The other issue is how this became a two-family house without approval. Mr. Brown should go to both the Building Department and the Tax Office to check for records such as permits and property cards. The matter was carried to the 6/7/10 meeting

5. Porqui Pas, 31 Westwood Avenue - Appeal/Variance Application - Carried to 7/12/10 at the request of the applicant;

6. Apovia Westwood LLC, 224 3rd Avenue - Variance - Anthony DeCandia, Esq., 639 Doris Place, Ridgewood, NJ, appeared on behalf of Apovia and as General Manager of the LLC. Architect Mark Stephanelli, 63 Ridge Road, Lyndhurst, NJ, was also present, and both were sworn in. This was their first appearance, and Mr. DeCandia presented the publication documents, which Mr. Rutherford reviewed and found to be in order.

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The application was for a "D" variance for changing an office to an apartment. They are in an R2 District which permits mixed use buildings. This use, two one-bedroom apartments on the second floor and an office on the first floor, exists from a variance approval in 1986. The Resolution dated 2/8/1996 was marked into evidence. When he bought the property he received a letter from the Building Department stating it is a permitted use. It is primarily a residential zone, and it is very difficult to rent this space as an office. In order to put the space back to a productive use they want to return it to an apartment, which it was before. He bought the property in 1996 used it as an office, but had difficulty maintaining it as commercial space. There are typical small closets, a bath with a bathtub. There was once a kitchen, but the pipes were cut and capped off. They want to return it to an apartment. They want to return the kitchen the way it was. The inside is set up nicely to function as an apartment with the exception of a kitchen, which they will add with the necessary permits. The yard contains ample parking for seven cars. When it was a commercial use it may have needed even more spaces, but for a residential use they would need six spaces so there is a surplus of one space. They are reducing the intensity of the use of this property. By doing so they will reduce the traffic impact on the neighborhood, as it will be less for an apartment than a business space. Parking requirements are less too, going from commercial to residential. Traffic would be reduced as well. The resident use will be more in keeping with the predominantly residential neighborhood, and they would like to add to that residential flavor. They could also eliminate the signage which would give an immediate visual impact improvement. One of the signs is neon, which would disappear.

Mr. Stephanelli described the plans he prepared. Each apartment has a main hallway with one bedroom and one bath and a non-livable attic. The basement is a cellar with 6.5' ceiling height, and is just for storage and utilities. The entrance to the new apartment would be from a covered porch. The kitchen would go in the space where there was presumably a kitchen before. There is a fence. Everything is existing and conforming except side yard setback and lot width. There was an additional parking spot which could be used for guests. Mr. Oaks asked how many parking stalls were required, and Mr. Lydon responded six.

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Mr. Raimondi asked for the impervious coverage. Mr. Stephanelli stated it totals 5,911 sq. ft. or 78.8%. Building coverage is 40%. Mr. Raimondi asked, and Mr. responded the property is sloped and the last 5' is not paved. Mr. Raimondi suggested a seepage pit. He recommended eliminating the last parking spot, and putting in a seepage pit in the landscaping area. Mr. Martin asked if he reviewed the Borough Master Plan, and Mr. Stephanelli said he was not. Mr. Martin asked Mr. Lydon to give the benefit of his report. Mr. Lydon said he recommended the application be deemed complete and that the Master Plan did not speak to three unit buildings. It is a "D" variance.

Chairman Martin advised the Master Plan advises against what they are proposing and recommended they retain a professional planner. Mr. DeCandia requested the matter be continued. Mr. Lydon suggested the one-bedroom apartments be converted to a two-bedroom apartment upstairs. Mr. DeCandia commented with two-bedroom apartments there will be children. Mr. Martin asked Mr. Lydon should the Zoning Board be concerned about creating additional units in a zone where the Master Plan discourages. The matter was carried to the 6/7/10 meeting.

7. CVS, 289 Broadway - Application for Development (5/10/10 Special Meeting) (Christopher Owens recused) Carmine R. Alampi, Esq. reviewed from the last meeting. Joe Sabella, 8 Jonathan Drive, Lafayette, NJ was sworn in. Mr. Sabella's position in CVS is District Sales Manager. He has jurisdiction over the operations and staffing of local stores in the NJ area. Mr. Alampi questioned Mr. Sabella, who stated he was familiar with the operations and design of the store. Mr. Sabella testified the drive-through is used for dropping off and picking up a prescription, not for waiting for it to be filled. They come back up a few hours later. During the business day, there are periods where no one is in the drive through; the busy time is usually after school or work. It only takes up a few minutes for the transaction. There are no other transactions permitted except in the case of a sick child that needs Tylenol. Typically they may be aware ahead of time. They don't sell milk or cigarettes at the drive-through. The configuration of the building and property is such to accommodate this. The store size needs to be as large as possible for the large variety of items, and this one is smaller than others. Mr. Sabella expressed to the Board the number of employees, depending on the

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part-timers, typically 25-30 employees. The hours are 7am to 10pm. A manager or crew member may come in at 7am and a second at 10am. The morning person would work until 3pm and someone else would come in and close the store at 10 pm. They don't have customers in the store at all hours. The cashier will duplicate the job in the aisles as needed, and when a customer goes to check out, they will return to the register. The staff also works in the stock room. The pharmacy is staffed similarly, beginning at 8am. With regard to the design of the floor plan, the main entrance that faces the parking he was familiar with as well as the store's design to give the appearance from outside of a second entranceway for purposes of aesthetics. Obstacles faced in creating a second entranceway would be safety. Whenever they have a second entrance, we have to man that second entrance and duplicate the tasks that each employee has to do. It is extremely confusing for the customers. The customers take about eight minutes to shop and the less time they spend shopping, the more time they take to get out of the store. They have to man the front and back locations, and that confuses customers as to where to check out. Their goal is to greet every customer when they come in. Customers become more aware that they are acknowledged and they are more honest. Some issues deal with shoplifting and the ability of the employee to monitor the customers. It is CVS's responsibility to make sure they are safe.

Mr. Arroyo noted the current CVS has two entrances. Mr. Sabella was not aware because he is not in charge of that store. He is not familiar with that layout. Mr. Arroyo asked if he was familiar with Cresskill CVS, and he was not. Mr. Oakes noted the second entrance would already have the register at the pharmacy and would be about 5' away from the entrance, so he was not sure why they did not want the second entrance. Mr. Sabella looked at the plan and commented it looks like 35'. Mr. Oakes asked if they could move up the pharmacy section. Chairman Martin noted at the last meeting the Board asked for a CVS representative authorized to make such decisions such as this, and it appears this witness cannot. It makes no sense why we are doing this. Mr. Alampi asked for a representative and thought he understood this witness's authority as Sales Manager. This store, Mr. Sabella, said this store is not his now, but could be his. He did not know who makes these decisions. Mr. Alampi will attempt again, through the client, to secure a representative that has authority to approve changes to the

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floor plans. Mr. Sabella did give some context to the applications. Mr. Sabella said if they did have a entrance, they would have to have a second register and more manpower and reconfiguring the layout for the pharmacy. The primary goal of their business is their pharmacy. The drive-through is the smallest part of the business. Mr. Bicocchi asked, and Mr. Sabella responded the layout and entrance as shown seems to be fine with him. Mr. Hartman asked if he was concerned with the Westwood store having two entrances in connection with safety. Mr. Raimondi asked if he had more storage could he reduce the store. Mr. Sabella said with a smaller sales floor, he would have to reduce the selection. Mr. Raimondi asked how often a drive-through customer is asked to come into the store. Maybe once or twice a week Mr. Sabella said. Usually if there is a problem with a prescription they make the customer aware with a phone call if the pharmacy needs to contact the doctor and tells them not to come back until a certain time. They log in pickup times specifically so they can have them ready. Mr. Arroyo asked which of their competitors have drive-throughs. Mr. Raimondi asked if he could pay for other items at the pharmacy line, and the response was yes. If he wanted to pay for mixed items at a different register in front, the pharmacist would have to walk the prescription up. Mr. Martin commented they would ask someone from corporate who would be able to authorize changes to the plan. Mr. Sabella said all the stores are different, and he does not have any other stores configured near a main road.

Mr. Martin asked how many employees he has in a typical day, and Mr. Sabella said usually 12, coming and going with shift changes. Mr. Martin said we have two entrances now in the Westwood store. Mr. Alampi commented this witness was not familiar with the Westwood store, which has 8,000 square feet. Mr. Sabella said he had other stores 11,000 sq. ft. Westwood store as it exists does not meet their needs any more. They need to do this to be competitive. Otherwise, Walgreen's will take the business. As for shopping carts usually do not leave the store, although they can. Many times we help the customers with the bags and go out and get the carts. Mr. Martin was concerned about shopping carts being left in the parking lot and did not want them leaving the store. Every store he has can go in the lot, and the employees go out and get them. If necessary, he has to buy new ones. Mr. Alampi asked where he selects his

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employees, and Mr. Sabella said they are community based. The pharmacy employees are hired by the pharmacist.

The matter was opened to the public for questions of Mr. Sabella. Richard Bonsignore, Westwood, asked where statistics come from for the drive-through, noting he was projecting 25 cars. Mr. Sabella responded with 7,000 stores, the numbers were based on corporate guidelines and like stores in the State of NJ. They also tested it locally in Cresskill and Teaneck. When asked, he did not know if they had the same population. Mr. Bonsignore asked if there were no drive-through, would this store be bigger than it is, and Mr. Sabella said no.

Bruce Meisel, Upper Saddle River, was more concerned about the convenience to Westwood citizens. He asked what kinds of customers use the drive-throughs. The elderly and mothers with young children. The drive-through does not do anything additional for them except as an accommodation for their customers.

There were no further questions.

Mr. Alampi expressed that he was very pleased with the testimony of Mr. Sabella. The burden of proof is less than the Medici standards. This witness' testimony was right "on point" with his argument. Carried to 5/10/10 special meeting with a time extension granted.

FAHIE - Mr. Brown was sworn in and stated he was awaiting a response from the Borough regarding the driveway being on the other lot. Mr. Brown introduced photos taken by him of the property, which he described in detail. Mr. Rutherford marked them into evidence. Mr. Martin stated the Board needed more proofs and documentation. The other issue is how this became a two-family house without approval. Mr. Brown should go to both the Building Department and the Tax Office to check for records such as permits and property cards.

8. Retro Fitness, 25 Sullivan Street - Carried to 6/7/10;

10. DISCUSSION: None

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:05 p.m.

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Respectfully submitted,

**MARY R. VERDUCCI, Paralegal
Zoning Board Secretary**